

Notice of Agency Rule-making Proposal

AGENCY: Department of Professional and Financial Regulation, Office of Licensing and Registration

RULE TITLE OR SUBJECT: Chapter 400, Agency/Designated Broker Responsibilities; Chapter 410, Minimum Standards of Practice

PROPOSED RULE NUMBER: 98-P

(LEAVE BLANK - ASSIGNED BY SECRETARY OF STATE):

CONCISE SUMMARY (UNDERSTANDABLE BY AVERAGE CITIZEN): The amendments to Chapter 400: (1) require the designated broker to establish policies relating to the registration of internet domain names and the creation of web sites in the name of a real estate agency, and (2) regulate the circumstances in which a real estate agency may pay brokerage compensation to an affiliated licensee's legal business entity.

The amendments to Chapter 410: (1) establish an advertising format for real estate brokerage advertisements, and (2) prohibit an affiliated licensee from registering an internet domain name or creating a web site in the name of the real estate brokerage agency without the knowledge and consent of the designated broker.

The statement of economic impact on small business required by 5 MRSA §8052(5-A) may be obtained from the agency contact person.

THIS RULE WILL ☐ **WILL NOT** ☒ **HAVE A FISCAL IMPACT ON MUNICIPALITIES.**

STATUTORY AUTHORITY: 32 MRSA §13065 and 13279

PUBLIC HEARING):

(IF ANY, GIVE DATE, TIME, LOCATION)

March 26, 2009, 9:30 a.m., Department of Professional and Financial Regulation, 122 Northern Avenue, Gardiner, Maine

DEADLINE FOR COMMENTS: April 6, 2009

AGENCY CONTACT PERSON: Carol Leighton, Director, Real Estate Commission

AGENCY NAME: Office of Licensing and Registration

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PROPOSED RULE AVAILABLE ON LINE AT: www.maine.gov/professionallicensing

Please approve bottom portion of this form and
assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____ DATE: _____
Authorized signature

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**039 REAL ESTATE COMMISSION****Chapter 400: AGENCY/DESIGNATED BROKER RESPONSIBILITIES**

Summary: This chapter details requirements of maintaining a real estate brokerage agency and establishes the specific supervisory responsibilities of the designated broker.

PROPOSED RULE

The Commission proposes to amend Section 1 of Chapter 400 and adopt new Sections 6 and 7 of Chapter 400 as shown in the attached pages. No other part of Chapter 400 is affected by the proposed rule.

STATUTORY AUTHORITY: 32 MRSA §§13065 and 13279

EFFECTIVE DATE:

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**039 REAL ESTATE COMMISSION****Chapter 400: AGENCY/DESIGNATED BROKER RESPONSIBILITIES**

Summary: This chapter details requirements of maintaining a real estate brokerage agency and establishes the specific supervisory responsibilities of the designated broker.

1. Responsibilities of Designated Broker**1. Generally**

The designated broker shall supervise the activities of affiliated licensees, the activities of unlicensed persons affiliated with the real estate brokerage agency and the operation of the real estate brokerage agency. The supervision includes, at a minimum, the establishment of policies and procedures that enable the designated broker to review, manage and oversee the following:

- A. The real estate transactions performed by an affiliated licensee;
- B. Documents that may have a material effect upon the rights or obligations of a party to a real estate transaction;
- C. The filing, storage and maintenance of such documents;
- D. The handling of money received by the real estate brokerage agency for the parties to a real estate transaction;
- E. The advertising of any service for which a real estate license is required;
- F. The familiarization by the affiliated licensee with the requirements of federal and state law governing real estate transactions; ~~and~~
- G. The dissemination, in a timely manner, to affiliated licensees of all regulatory information received by the real estate brokerage agency pertaining to the practice of real estate brokerage;
- H. The registration of any domain name for a web site in order to promote real estate brokerage services or the sale or purchase of real estate through the agency; and
- I. The development or uploading to the internet of a web site that promotes real estate brokerage services or the sale or purchase of real estate through the agency.

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6. Payment of Brokerage Compensation to Affiliated Licensee's Legal Business Entity

Payment of brokerage compensation by an agency to an affiliated licensee's legal business entity does not constitute payment of brokerage compensation to an unlicensed person as set forth under 32 MRSA §13067-A(8) provided that the agency has in effect at the time such payment was made a written agreement with the affiliated licensee that includes at a minimum, the following provisions:

1. That the affiliated licensee has an ownership interest in the business entity;
2. That the business entity is lawfully organized under the laws of its home state or other jurisdiction. If the business entity is a corporation, limited liability company, limited partnership or limited liability partnership, a copy of the business entity's certificate of existence from the Maine Secretary of State must be attached to the agreement. If the business entity is a foreign corporation, foreign limited liability company, foreign limited partnership or foreign limited liability partnership, a copy of the business entity's certificate of authority must be attached to the agreement;
3. That the business entity was formed for the sole purpose of receiving brokerage compensation for tax purposes and will not engage in any other business or receive compensation from any other business venture.
4. That the business entity will not perform any act requiring a real estate license nor hold itself out as engaged in such activity; and
5. That the business entity will not advertise brokerage services or real estate for sale or purchase or receive referral fees or commissions except from the agency.

The designated broker shall provide a copy of the written agreement to the Director upon request.

7. No Third-Party Payment to Affiliated Licensee or Affiliated Licensee's Legal Business Entity

Payment of brokerage compensation to an affiliated licensee or an affiliated licensee's legal business entity may only be made by the agency. No third-party payment is permitted.

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

039 REAL ESTATE COMMISSION

Chapter 410: MINIMUM STANDARDS OF PRACTICE

Summary: This chapter clarifies and establishes standards for practicing real estate brokerage.

PROPOSED RULE

The Commission proposes to amend Sections 1 and 13 of Chapter 410 as shown in the attached pages. No other part of Chapter 410 is affected by the proposed rule.

STATUTORY AUTHORITY: 32 MRSA §§13065 and 13279

EFFECTIVE DATE:

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**039 REAL ESTATE COMMISSION****Chapter 410: MINIMUM STANDARDS OF PRACTICE**

Summary: This chapter clarifies and establishes standards for practicing real estate brokerage.

1. Advertising**1. Definition**

As used in this Section, the terms “advertise,” “advertising” and “advertisement” include all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication for any purpose related to real estate brokerage activity, including, at a minimum, advertising the sale or purchase of real estate or promotion of real estate brokerage services conducted by mail, telephone, the Internet, the World Wide Web, E-mail, electronic bulletin board or other similar electronic common carrier systems, business cards, signs, television, radio, magazines, newspapers, and telephonic greetings or answering machine messages.

2. Trade Name

Advertising must be done in the real estate brokerage agency’s trade name as licensed with the Commission ~~and the trade name must be prominently displayed.~~

3. Contact Information

Advertising must include information where the public can contact the real estate brokerage agency either by phone or in person at the agency’s place of business as licensed by the Commission.

~~**4. Advertising by Affiliated Licensees**~~

~~Advertising by affiliated licensees must be under the supervision of the designated broker. Such advertising may include an affiliated licensee’s name and phone number or other contact information, provided the real estate brokerage agency’s trade name and contact information is also included as required in this Section.~~

~~**4-A. Advertising Format**~~

~~Real estate brokerage advertisements must contain the trade name and contact information of the real estate brokerage agency as licensed by the Commission. In addition, the designated broker may authorize an advertisement that includes the name, telephone number, slogan, logotype or photo of an affiliated licensee or group or team of affiliated licensees as part of the brokerage services being offered by the real estate~~

brokerage agency. The affiliated licensee or group or team of affiliated licensees may not independently engage in real estate brokerage.

If an advertisement includes the name of an affiliated licensee or the name of a group or team of affiliated licensees, the trade name and contact information of the real estate brokerage agency must:

- A. Appear adjacent to or immediately above or below the name and telephone number (if any) of the affiliated licensee or group or team of affiliated licensees;
- B. Appear in a type size no smaller than the type size of the name and telephone number (if any) of the affiliated licensee or group or team of affiliated licensees; and
- C. Appear in a type face and type style no less prominent than the type face and type style of the name and telephone number (if any) of the affiliated licensee or group or team of affiliated licensees.

5. Written Permission of Owner Required to Advertise

A real estate brokerage agency or its affiliated licensees shall not advertise any real estate for sale without first obtaining the written permission of the owner or the owner's authorized representative.

6. Advertising of Exclusive Listing Held by Another Agency

A real estate brokerage agency or its affiliated licensees shall not publish or cause to be published an advertisement that makes reference to the availability of real estate which is exclusively listed for sale by another real estate brokerage agency unless the licensee obtains the prior written consent of the designated broker who has been authorized by the owner to provide consent.

7. Deception and Misrepresentation Prohibited

Advertising must be free from deception and shall not misrepresent the condition of the real estate, terms of the sale or purchase, real estate brokerage agency policies, or real estate brokerage services.

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13. Licensee's Duty

1. Keep the Designated Broker Informed

An affiliated licensee shall keep the designated broker fully informed of all activities conducted on behalf of the agency and shall notify the designated broker of any other activities that might impact on the responsibilities of the designated broker as required under Chapter 400, Section 1 of the Commission's rules.

2. Provide Documents to Designated Broker

An affiliated licensee must provide originals or true copies of all real estate brokerage documents and records prepared in a real estate transaction as listed in Chapter 400, Section 3 of the Commission's rules to the designated broker within 5 calendar days after execution of the document or record.

3. Domain Names and Web Sites

An affiliated licensee may not directly or indirectly, through himself or others, register a domain name for a web site in order to promote real estate brokerage services or the sale or purchase of real estate through the agency with whom the licensee is affiliated without the knowledge and consent of the designated broker.

An affiliated licensee may not directly or indirectly, through himself or others, develop or upload to the internet a web site that promotes real estate brokerage services or the sale or purchase of real estate through the agency with whom the licensee is affiliated without the knowledge and consent of the designated broker.

Any web site developed or uploaded under this Section must comply with the advertising requirements contained in Chapter 410, Section 1.